

1 **Rule 1102. Reliable Hearsay in Criminal Preliminary Examinations.**

2 (a) Statement of the Rule. Reliable hearsay is admissible at criminal preliminary
3 examinations.

4 (b) Definition of Reliable Hearsay. For purposes of criminal preliminary examinations
5 only, reliable hearsay includes:

6 (1) hearsay evidence admissible at trial under the Utah Rules of Evidence;

7 (2) hearsay evidence admissible at trial under Rule 804 of the Utah Rules of
8 Evidence, regardless of the availability of the declarant at the preliminary
9 examination;

10 (3) evidence establishing the foundation for or the authenticity of any exhibit;

11 (4) scientific, laboratory, or forensic reports and records;

12 (5) medical and autopsy reports and records;

13 (6) a statement of a non-testifying peace officer to a testifying peace officer;

14 (7) a statement made by a child victim of physical abuse or a sexual offense which
15 is recorded in accordance with Rule 15.5 of the Utah Rules of Criminal Procedure;

16 (8) a statement of a declarant that is written, recorded, or transcribed verbatim
17 which is:

18 (A) under oath or affirmation; or

19 (B) pursuant to a notification to the declarant that a false statement made
20 therein is punishable; and

21 (9) other hearsay evidence with similar indicia of reliability, regardless of
22 admissibility at trial under Rules 803 and 804 of the Utah Rules of Evidence.

23 (c) Continuance for Production of Additional Evidence. If hearsay evidence is proffered
24 or admitted in the preliminary examination, a continuance of the hearing may be granted
25 for the purpose of furnishing additional evidence if:

26 (1) The magistrate finds that the hearsay evidence proffered or admitted is not
27 sufficient and additional evidence is necessary for a bindover; or

28 (2) The defense establishes that it would be so substantially and unfairly
29 disadvantaged by the use of the hearsay evidence as to outweigh the interests of
30 the declarant and the efficient administration of justice.

31 (d)(1) Except as provided in paragraph (d)(2), a prosecutor, or any staff for the office of
32 the prosecutor, may transcribe a declarant's statement verbatim or assist a declarant in
33 drafting a statement.

34 (2) A prosecutor, or any staff for the office of the prosecutor, may not draft a
35 statement for a declarant, or tamper with a witness in violation of Utah Code
36 section 76-8-508.

37 (e) A court may not admit reliable hearsay evidence in accordance with this rule unless
38 there is testimony presented at the preliminary examination as described in Rule 7B(d)(2)
39 of the Utah Rules of Criminal Procedure. The prosecutor is not required to introduce
40 evidence that corroborates the substance of a statement submitted under paragraph (b)(8)
41 for the statement to be admissible at the preliminary examination. The prosecutor may,
42 but is not required to, call the declarant of a statement submitted under paragraph (b)(8)
43 at the preliminary examination. This paragraph (e) does not otherwise limit a defendant's
44 right to call witnesses under Rule 7B of the Utah Rules of Criminal Procedure.

45 Effective: 2/29/2024